

**APPENDIX**

No. 82-5015  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT  
UNITED STATES OF AMERICA  
Plaintiff-Appellee

ORDER

v.  
THOMAS BRATTON,  
Defendant-Appellant

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Before: LIVELY and KENNEDY, Circuit Judges; and  
FAIRCHILD, Senior Circuit Judge.\*

The defendant appeals from his jury conviction for mail fraud in violation of 18 U.S.C. § 1341. On appeal the defendant does not contest the issue of the use of mails, but argues that there was insufficient proof of any underlying scheme to defraud and that the jury verdict cannot stand. This court concludes that the evidence was sufficient to support the guilty verdict. The defendant also contends that he was deprived of a fair trial by certain conduct of the prosecutor and that the district court committed error in excusing a seated juror during the trial and substituting an alternate juror. Upon consideration, this court concludes that the district court did not abuse its discretion in excusing the juror and that the prosecutor did not engage in any conduct during the trial which would warrant reversal.

The defendant also raises one issue with respect to evidence received during the trial. A witness was offered by the government and was permitted to testify that a printed chart which he produced was

relied upon by him and others engaged in the same line of business in determining whether various brand products were substantially equivalent. We conclude that the district court did not commit error in permitting the witness to testify from the chart, since such publications are admissible under Rule 803(17), Federal Rules of Evidence.

The judgement of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman

Clerk

\*The Honorable Thomas Fairchild,  
Senior Judge, U.S. Court of Appeals  
for the Seventh Circuit, sitting by  
designation.

John P. Hehman, Clerk

ISSUED AS MANDATE: JANUARY 12, 1983  
COSTS: NONE

A TRUE COPY

Attest:

JOHN P. HEHMAN, Clerk

By /s/ Andrew Crockett

Deputy Clerk